

BEFORE THE  
**Federal Communications Commission**  
WASHINGTON, D.C. 20554

In the Matter of	)	
	)	
Closed Captioning of Video Programming	)	CG Docket No. 05-231
	)	
Telecommunications for the Deaf, Inc.	)	
Petition for Rulemaking	)	

**JOINT REPLY COMMENTS OF TIME WARNER CABLE INC. AND  
BRIGHT HOUSE NETWORKS, LLC**

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## **Summary**

Time Warner Cable Inc. and Bright House Networks, LLC operate News Channels (as defined in the Reply Comments) that offer their cable system subscribers with round-the-clock news and public interest programming of local significance. This programming is generally made accessible to deaf and hearing-impaired subscribers through use of the electronic newsroom technique (“ENT”) captioning method.

While the FCC has limited the circumstances pursuant to which certain entities can rely on ENT, it wisely excluded providers of cable local origination programming, like the News Channels, from those restrictions. While the News Channels appreciate that the NPRM does not suggest elimination of ENT as a means for local cable programmers to offer closed captioning, any action that would limit the availability of ENT as a means for the News Channels to offer captioning would have far-reaching adverse consequences.

In addition, it is unnecessary for the FCC to impose non-technical quality standards. The News Channels have marketplace incentives to ensure accuracy. ENT remains capable of offering near-perfect captioning. In contrast, real-time captioning is inherently prone to some level of inaccuracy. Moreover, it would be impracticable to enforce any such standards.

In sum, the FCC should continue to allow local cable programmers to rely on ENT for captioning and allow marketplace forces to drive non-technical quality issues.

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Time Warner Cable Inc. (“Time Warner Cable”) and Bright House Networks, LLC (“Bright House Networks”) hereby jointly submit Reply Comments in the above-captioned proceeding.

**I. TIME WARNER CABLE AND BRIGHT HOUSE NETWORKS HAVE  
CREATED LOCAL NEWS CHANNELS THAT PROVIDE CUSTOMERS WITH  
ROUND-THE-CLOCK NEWS AND PUBLIC INTEREST PROGRAMMING.**

Time Warner Cable has developed seven local news channels that are available to subscribers of Time Warner Cable systems in and around Austin, Texas; New York City, Albany, Rochester and Syracuse, New York; and Charlotte and Raleigh, North Carolina. Similarly, Bright House Networks offers its own local news channels to subscribers of its systems in and around Tampa and Orlando, Florida (the Time Warner Cable and Bright House Networks’ local cable news channels individually a “News Channel” and collectively the “News Channels”).

The News Channels offer Time Warner Cable and Bright House Networks subscribers with round-the-clock news and public interest programming of local significance, which is generally accessible to deaf and hearing-impaired subscribers through use of the electronic newsroom technique (“ENT”) captioning method. The News Channels typically:

- Are staffed 24 hours a day;
- Maintain a fully-equipped local studio facility;
- Employ full-time news gathering professionals;
- Have full capability to provide live coverage of breaking news using mobile facilities;
- Have access to sophisticated weather forecasting capabilities;
- Have installed state-of-the-art EAS equipment; and
- Have the ability to graphically display emergency information even during regular news programming.

While offering invaluable public service programming to their customers, the News Channels would be unlikely to be able to sustain these quality offerings over an extended period of time if required to incur substantial additional costs not contemplated at the time of conception. In particular, any mandated use of real-time captioning, instead of ENT, would likely impose significant increased costs with no concomitant benefit to the public.<sup>1</sup>

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<sup>1</sup> Other commenting parties in this proceeding have voiced similar concerns regarding the costs of real-time captioning. For instance, “[o]ne local cable news channel explained that a real-time requirement would cause the channel to cease operation, stating, ‘it would be a significant portion of our operating budget and it would not be practical to offset that through staff reductions, the only variable we control.’” *See* Comments of the Radio-Television News Directors Association, CG Docket No. 05-231, p. 5 (filed Nov. 10, 2005) (“RTNDA Comments”).

## **II. THE FCC SHOULD PERMIT THE NEWS CHANNELS TO CONTINUE TO RELY ON THE ELECTRONIC NEWSROOM TECHNIQUE FOR PURPOSES OF THE FCC'S CLOSED CAPTIONING REQUIREMENTS.**

### **A. The News Channels Currently May Rely on ENT to Caption Their Programming.**

While the Commission has gradually increased the percentage of programming that must be captioned over the past several years, it has continually permitted certain entities to rely on ENT for purposes of the closed captioning benchmarks.<sup>2</sup> Currently, the major national broadcast networks (i.e., ABC, CBS, Fox and NBC), affiliates of these networks in the top 25 Nielsen Designated Market Areas ("DMAs") and national non-broadcast networks serving at least 50 percent of all homes subscribing to multichannel video programming services cannot count ENT-captioned programming towards their compliance with the closed captioning benchmarks.<sup>3</sup> The Commission, however, has wisely excluded providers of cable local origination programming, like the News Channels, from this restriction.<sup>4</sup>

### **B. Because of its Efficiency and Reliability, the News Channels Primarily Rely on ENT for Making Their Round-the-Clock Programming Accessible to Hearing-Impaired Viewers.**

ENT is the primary method by which the News Channels caption their local news and public interest programming. ENT utilizes software to generate captions from a script or teleprompter. Because only material that is scripted can be captioned using ENT, certain live

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<sup>2</sup> See *Closed Captioning and Video Description of Video Programming*, Report and Order, 13 FCC Rcd 3272, ¶ 84 (1997) ("Closed Captioning Report and Order"); see also *Closed Captioning and Video Description of Video Programming*, Order on Reconsideration, 13 FCC Rcd 19973, ¶¶ 37-39 (1998) ("Closed Captioning Reconsideration Order").

<sup>3</sup> See 47 C.F.R. § 79.1(e)(3).

<sup>4</sup> See *Closed Captioning Reconsideration Order* at n. 128 ("As individual cable systems serve significantly fewer homes than either national programming networks and broadcast stations, we will not place any limitations on the ability of individual cable systems to count [ENT] towards compliance for the programming they produce.").

field reports, breaking news and weather reports may not be captioned through ENT. To overcome this limitation, the News Channels have the capability to use crawls<sup>5</sup> and graphics to visually display such late breaking and emergency news reports.<sup>6</sup> The ready availability and capacity of newsroom staff to respond on short notice ensures that critical information is accessible to deaf and hearing-impaired viewers.<sup>7</sup>

The News Channels currently rely almost solely on ENT to comply with closed captioning requirements because it is highly cost-effective and extremely reliable.<sup>8</sup> ENT essentially requires a reasonable up-front investment in ENT software and the additional costs associated with training in-house personnel how to properly use the software. In many cases, ENT is included as a feature of the software programs the News Channels would otherwise be required to purchase to facilitate electronic news delivery. In general, ENT does not require staff

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<sup>5</sup> A crawl is captioned material manually added by newsroom staff that typically “crawls” across the bottom of the television screen.

<sup>6</sup> The Commission has recognized that strict verbatim captioning is not possible for certain types of programming and that information conveying pertinent details is adequate to provide hearing-disabled viewers access to that programming. Implementing the requirement to provide critical details of emergency information to hearing-disabled viewers, the Commission noted that “[t]hose entities that are permitted to count captions created using the electronic newsroom technique still must comply with [the rule requiring that emergency information be made accessible to people with hearing disabilities]. Where they cannot provide the required emergency information using this technique, they must use another method of visual presentation to ensure the same accessibility for persons with hearing disabilities as for any other viewer, as required by the rule.” *See Closed Captioning and Video Description of Video Programming*, Second Report and Order, 15 FCC Rcd 6615, ¶ 16 (2000).

<sup>7</sup> Advocates for the hearing disabled have suggested that a manual transcription summarizing unscripted material would be sufficient. *See* Comments of WGBH National Center for Accessible Media, CG Docket No. 05-231, p. 22 (filed Nov. 10, 2005); *see also* Comments of Hubbard Broadcasting, CG Docket No. 05-231, p. 9 (filed Nov. 10, 2005) (“Hubbard Comments”) (“ENT, in combination with graphics and other visuals, provides very substantial programming to the hearing impaired during newscasts.”). The approach employed by the News Channels is consistent with the foregoing.

<sup>8</sup> The News Channels currently are required to caption an average of at least 1350 hours of original English language programming per quarter. 47 C.F.R. § 79.1(b)(1)(iii).

to take on any substantial additional tasks in day-to-day news production. Because of its cost-effectiveness and reliability,<sup>9</sup> ENT should continue to count towards closed captioning benchmarks.

### **III. A REQUIREMENT THAT THE NEWS CHANNELS USE ONLY REAL-TIME CAPTIONING WOULD BE COST-PROHIBITIVE.**

Telecommunications for the Deaf, Inc. (“TDI”) has asked the FCC to further extend the restrictions on using ENT that currently apply to television stations located in the top 25 DMAs.<sup>10</sup> The News Channels appreciate that the NPRM does not suggest elimination of ENT as a means for local cable programmers, like the News Channels, to comply with FCC closed captioning obligations. Nevertheless, as detailed below, any action that would limit the availability of ENT as a means for the News Channels to offer captioning would have far-reaching adverse consequences.

#### **A. What is Real-Time Captioning?**

Real-time captioning is a process whereby a captioner listens to programming as it airs and types what he/she hears into a stenographic keyboard connected to a computer. Computer software then creates captions that are transmitted via a telephone line to the studio. Real-time captioners must have the ability to type between 180 and 250 words per minute with minimal errors.<sup>11</sup> However, the FCC has noted that even a highly skilled captioner with up to a 99%

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<sup>9</sup> See Hubbard Comments at 9.

<sup>10</sup> See *Closed Captioning of Video Programming*, Notice of Proposed Rulemaking, FCC 05-142, 20 FCC Rcd 13211, ¶ 48 (2005) (“2005 Closed Captioning NPRM”).

<sup>11</sup> See, e.g., Joint Comments of AZN Television, et al., CG Docket No. 05-231, p. 20, n. 25 (filed Nov. 10, 2005) (stating that “[t]he rate of dialogue in programs that commonly are steno-captioned (sports, news, and public affairs programs) typically averages 180 words per minute, and may, for brief periods, exceed 250 words per minute”).

accuracy rate may make up to 2 mistakes per minute.<sup>12</sup> Indeed, a major drawback of real-time captioning is the significant number of mistakes that occur simply because of captioners' lack of familiarity with the content or context of local newscasts.<sup>13</sup> As a result, captioners often misspell the names of local people and places contained in newscasts, for example.

#### **B. Real-Time Captioning Involves Significantly Greater Costs Than ENT.**

Full-time real-time captioning is not a realistic option for the News Channels. As recognized in the *1996 Closed Captioning Report*, in-house, real-time captioning would be cost-prohibitive for the News Channels because it involves: (1) significant up-front expenses for equipment, (2) payment of captioners' salaries and (3) significant staff time to operate the equipment on an ongoing basis.<sup>14</sup> The cost of real-time captioning equipment would range from \$7,000 to \$20,000 per News Channel,<sup>15</sup> and back-up equipment would be needed in case of equipment failures.

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<sup>12</sup> See *Closed Captioning and Video Description of Video Programming*, Report, 11 FCC Rcd 19214, ¶¶ 91-92 (1996) ("*1996 Closed Captioning Report*"); see Comments of NBC Telemundo License Co., CG Docket No. 05-231, pp. 6-7 (filed Nov. 10, 2005) (noting that its "internal analysis demonstrates that stations relying on the real-time captioning of news programming by leading outside captioning services can reasonably expect an accuracy rate of no better than 84 percent according to a straightforward word-error metric"); see also Comments of the National Cable and Telecommunications Association, CG Docket No. 05-231, p. 3 (filed Nov. 10, 2005) (observing that "even the best and most experienced stenocaptioner may make several errors per minute" when operating under extreme time pressure).

<sup>13</sup> See Comments of the National Association of Broadcasters, CG Docket No. 05-231, p. 12 (filed Nov. 10, 2005) ("NAB Comments") (observing that "[o]bscure words and little known names of places abound across communities served... and could easily tally up the error rate in a hurry..."); see also Comments of Cosmos Broadcasting Corporation, Cox Broadcasting, Inc., Media General Communications, Inc., and Meredith Corporation, CG Docket No. 05-231, p. 8 (filed Nov. 10, 2005) ("Cosmos Comments") (indicating that unfamiliar proper nouns are a common source of real-time captioning mistakes).

<sup>14</sup> See *1996 Closed Captioning Report* at ¶ 50.

<sup>15</sup> See, e.g., NAB Comments at 15, n. 23.



Real-time captioning is tedious and highly detailed work. Teams of two captioners likely would be needed for each eight-hour shift to ensure continuous coverage,<sup>16</sup> thus a total of six qualified captioners would be needed per day, with additional qualified captioners available on call to cover vacations, illness or other emergencies. This would involve an annual cost of approximately \$330,000 or more in salaries alone (excluding overhead costs, employee benefits and continued education).<sup>17</sup>

Outsourcing would be equally costly. Since the average hourly cost of outsourced English language captioning is \$108,<sup>18</sup> the total cost for each News Channel to caption using real-time captioning in the ordinary course of business would exceed \$785,000 per year. To the extent that a News Channel were to offer programming in additional languages, this cost would certainly increase.<sup>19</sup> Moreover, outsourcing would likely exacerbate the errors resulting from real-time captioning due to unfamiliarity with local news content.

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<sup>16</sup> While the rules exempt four hours of programming that air during the late night hours, *see* 47 C.F.R. § 79.1(d)(5), the News Channels would need captioners on call 24 hours a day in the event of late breaking or emergency news.

<sup>17</sup> *See* Comments of Media Captioning Services, CG Docket No. 05-231, p. 17 (filed Nov. 9, 2005) (“MCS Comments”) (noting that the annual salary for a captioner ranges from \$55,000 to \$60,000); *see also* Cosmos Comments at 4 (noting that the average annual salary for captioners is \$63,000 but can reach as high as \$100,000).

<sup>18</sup> This rate is based on captioners’ quotes ranging from \$90-\$125 per hour. The rate is assessed per hour of programming captioned, not per captioner. In a recent survey, major market television stations indicated that the hourly rate for real-time captioning is about \$150 per hour. *See* RTNDA Comments at 5.

<sup>19</sup> A significant number of the News Channels’ subscribers speak Spanish. The News Channels currently offer or might like to be able to offer Spanish language captioning in addition to English language captioning. With quotes for Spanish language captioning ranging from \$120 to \$398 per hour depending on whether the captions are Spanish-to-Spanish or English-to-Spanish, the total cost to provide Spanish language captioning would likely be much higher than the approximate \$785,000 annual cost for English language captioning. Absent the ability to use ENT to offer Spanish language captioning, the News Channels may not be able to offer a service that would add value and increase accessibility for their Spanish-speaking viewers.

As the Commission noted in its *Notice of Proposed Rulemaking*, the limited number of available captioners combined with an increased demand for captioning services presents a further concern.<sup>20</sup> Student enrollment in captioning programs is down significantly, prompting Congress to consider competitive grant programs to encourage individuals to become captioners.<sup>21</sup> Furthermore, in the U.S., there are only a handful of captioning companies with adequate resources to facilitate the News Channels' extensive captioning needs because of the substantial amount of programming the News Channels provide that would require real-time captioning.<sup>22</sup>

#### **IV. THE FCC SHOULD NOT IMPOSE NON-TECHNICAL QUALITY STANDARDS.**

The hearing-disabled community appropriately remains concerned about maintaining high standards for closed captioning, and the News Channels have an incentive to ensure high overall quality of their programming, including closed captioning for deaf and hearing-impaired subscribers. The FCC, however, has appropriately declined to adopt non-technical quality standards in the past, finding that development of such standards would best be left to the marketplace.<sup>23</sup>

The News Channels have in place policies and procedures designed to maintain high quality captioning.<sup>24</sup> As discussed above, the News Channels currently use ENT for captioning

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<sup>20</sup> 2005 *Closed Captioning NPRM* at ¶¶ 49-51.

<sup>21</sup> *Id.* at ¶ 51.

<sup>22</sup> The pool of captioning company providers consists of about 150 companies; however, four companies dominate the market for real-time captioning of local and national news and sports programming. See MCS Comments at 15-16.

<sup>23</sup> See *Closed Captioning Report and Order* at ¶¶ 222-24.

<sup>24</sup> For example, one News Channel worked with a hearing-impaired customer to better understand the nature of hearing-impaired customers' concerns and used that information to refine its captioning process with a goal of 100% accuracy.

the majority of their programming, which relies on the script or teleprompter to generate captions. With software modification, training and a corporate commitment to maintain high accuracy of scripting, ENT can generate near-perfect captioning, avoiding problems in accuracy of spelling and grammar. The News Channels also monitor insertion of closed captioning at both the staff and management levels.

Finally, as the Commission itself has pointed out, it would be difficult to establish non-technical quality standards, and impracticable for both video programming providers and the Commission to enforce such standards.<sup>25</sup> Indeed, to the extent the FCC were to require real-time captioning, it would be virtually impossible to ensure compliance with non-technical quality standards as there is no opportunity to review the captioning before it is delivered to viewers. The Commission therefore was correct in rejecting non-technical quality standards and associated monitoring requirements due to “the administrative burden that would be imposed. . . if millions of hours of . . . programming must be monitored to make sure that no more than a specified percentage of the words are wrong, misspelled or missing . . . .”<sup>26</sup>

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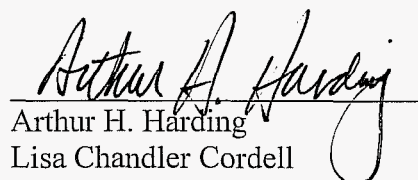
<sup>25</sup> See *Closed Captioning Report and Order* at ¶ 224.

<sup>26</sup> *Id.*

## V. CONCLUSION

The News Channels can continue to provide a valued service to hearing-impaired viewers, with high levels of accuracy, if allowed to continue using ENT to caption their programming. The costs associated with real-time captioning and the imposition of non-technical quality standards would be cost-prohibitive for the News Channels. Furthermore, such requirements would make it too onerous for the News Channels to comply with the closed captioning rules, and, consequently, would undermine the purpose of the closed captioning rules to make video programming more accessible to the deaf and hearing-impaired community. The Commission therefore should decline to further limit the use of ENT in counting as captioned programming and reject any proposals that would impose burdensome non-technical quality standards and monitoring requirements.

Respectfully submitted,

  
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